Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978
No. 78-23

DOROTHY MATTHIAS, Petitioner

vs.

FLORENCE WOOD ENDRES, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

Charles E. Felix
1633 N. Dormont Lane
Orlando, FL 32804
Counsel for Respondent

Phillip H. Logan
Post Office Box 2279
Sanford, FL 32771
(305) 323-3660
Counsel for Petitioner

Richard J. Brooks
Post Office Box 523
Altamonte Springs, FL 32701
Counsel for Respondent

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978
No.

DOROTHY MATTHIAS, Petitioner

vs.

FLORENCE WOOD ENDRES, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

DOROTHY MATTHIAS, Petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Florida entered in the above entitled case on December 15, 1978.

OPINIONS BELOW

The opinion of the Circuit Court, Eighteenth Judicial Circuit of Florida, is unreported and Final Judgment is printed in Appendix A hereto, infra, page 1. The opinion of the Fourth District Court of Appeals was filed April 15, 1977, and is reported in 345 SO2d 793(1977). The opinion is printed in Appendix A hereto, infra, page 2. The opinion of the Supreme Court of the State of Florida was filed December 15, 1977, and is reported in 353 SO2d 843(1977). The opinion is printed in Appendix A hereto, infra, page 6.

JURISDICTION

Judgment of the Circuit Court, Eighteenth Judicial Circuit of Florida, was entered April 12, 1976. Motion for Rehearing was denied May 4, 1976. Oral arguments on Amendment V and Amendment XIV, Section 1, of the United States Constitution, were made prior to Judgment and were preserved in the Motion for Rehearing which is printed in Appendix A hereto, infra, page 8.

Judgment of the Fourth District Court of Appeals reversing the Circuit Court was entered April 15, 1977, (see Appendix A hereto, infra, page 2) which Judgment was based solely on Florida Constitution, 1968, Article X, Section 4(c), which is printed in Appendix A hereto, infra, page 37.

Without Petition for Rehearing in the Fourth District Court of Appeals, FLORENCE WOOD ENDRES, Respondent herein, filed a Petition for Writ of Certiorari with the Florida Supreme Court to "review the decision." On December 15, 1977, the Supreme Court of the State of Florida entered Judgment reversing the Fourth District Court of Appeals, and waived hearing, argument and examination of the Record of the Court of Appeals, (see Appendix A hereto, infra, page 6.) Petition for Rehearing and Oral Argument was denied on May 2, 1978, (see Appendix A hereto, infra, page 17.) Petition to Quash was denied on May 2, 1978, (infra, Appendix A, page 19) and Motion to Recall Mandate (a Constitutional motion) was denied June 23, 1978, (infra, Appendix A hereto, page 36.)

In each Motion, Petitioner set out the Constitutional grounds for the Motion and cited applicable cases in support thereof.

USC 28 Sec. 1257(3) is the statutory basis for jurisdiction in that the Supreme Court of the State of Florida has divested Petitioner of vested property rights without due process of law; it has violated the clear mandate of Article X, Section 4(c), of the Florida Constitution; and it has violated the due process and equal protection clauses of the United States Constitution as set out in Amendments V and XIV, Section 1, thereof.

QUESTIONS PRESENTED

I. If a State Constitution provides that real property vests upon the happening of an unambiguous event and that event occurs, can the State Supreme Court divest the ownership of said real property by a judicial opinion which ignores the State Constitution without simultaneously violating due process and equal protection amendments to the United States Constitution?

II. If the Court of Appeals, having final appellate jurisdiction in a state (except on Constitutional and conflict questions) rules specifically on a Constitutional issue raised at trial and preserved on appeal, can the State Supreme Court reverse the Court of Appeals without dealing with the Constitutional questions, without calling up the record and without allowing the prevailing appellant to be heard?

III. Must the Supreme Court of a state follow stare decisis where Constitutional questions have not been raised in the precedents but Constitutional questions were specifically raised, preserved and ruled upon in the case at bar?

CONSTITUTIONAL PROVISIONS INVOLVED

I. Article X, Section 4(c), Florida Constitution (1968)
(Appendix, page 37)

II. Article I, Section 9, Florida Constitution (1968)
(Appendix, page 38)

III. Amendment V, United States Constitution
(Appendix, page 39)

IV. Amendment XIV, Section 1, United States Constitution
(Appendix, page 40)

STATEMENT

Edward C. Endres died testate March 29, 1971, survived by his widow, one child, and two grand children (children of a deceased child.) Decedent died seized of real property which qualified as "homestead property" under the laws and Constitution of the State of Florida.

Article X, Sec. 4(c), Florida Constitution (1968) was in effect at decedent's death, (see Appendix, page 37, for text.) This Section provides ". . . the homestead shall

not be subject to devise if the owner is survived by spouse . . . . (emphasis supplied)"

The Circuit Court ruled that the homestead property could be devised even though decedent was survived by a spouse and cited a Florida case as precedent. The Circuit Court refused to rule upon the effect of the Florida Constitution.

The Court of Appeals heard the Constitutinal issue and reversed the Circuit Court solely on the basis of Article X, Section 4(c). This is clearly set out in the published opinion. (See Appendix, page 2.)

The Florida Supreme Court reversed the Court of Appeals on the basis of direct conflict though the case with which there allegedly was conflict had not construed or interpreted Article X, Section 4(c) and which case had actually been based on a prior case in which there had been no surviving spouse.

Petitioner has used every motion provided by the rules (and some motions not provided by the rules) to call to the Supreme Court's attention that Edward C. Endres was survived by a spouse and under the Florida Constitution, a devise of homestead would not be valid. The Supreme Court has refused to acknowledge that this argument has been made and has violated its own precedents by waiving oral argument, waiving briefs and refusing to call up the record.

This action effectively amends the Constitution by judicial decision. The Court has steadfastly refused to consider Article X of the Florida Constitution.

This refusal has the effect of divesting property rights of the heirs which vested under the Constitution at the instant of

death of decedent and transferring ownership of the property to the devisee under decedent's will. This divesting of property rights granted by the Constitution is violative of due process and equal protection guaranteed by the United States Constitution.

A reading of the Opinion of the Supreme Court (see Appendix, page 6) will clearly show that the Court has not dealt with Constitutional questions raised and preserved and decided by the Appeals Court. Petitioner was entitled to have a ruling on the Florida Constitution to protect vested property rights. Refusal to grant a hearing and make such a ruling deprives Petitioner of property without due process of law.

Petitioner has raised the Florida and United States Constitution as follows:

1. In oral argument to Circuit Court (no jury.)

2. Motion for Rehearing in Circuit Court (Appendix, page 8.)

3. Order Denying Motion (Appendix, page 41.)

4. Assignments of Error to Fourth District Court of Appeals (Appendix, page 43.)

5. Opinion of Fourth District Court of Appeals (Appendix, page 2.)

6. Petition for Rehearing and Oral Argument to Supreme Court (Appendix, page 11.)

7. Order Denying (Appendix, page 17.)

8. Petition to Quash (Appendix, page 19.) (Clerk refused to file.)

9. Motion to Recall Mandate (no order entered), (Appendix, page 28.)

10. Amended Motion to Recall Mandate (Appendix, page 30.)

11. Order Denying (Appendix, page 36.)

REASONS FOR GRANTING THIS WRIT

I. The Supreme Court of Florida has amended Article X, Section 4(c), Florida Constitution (1968) by judicial decree.

II. Petitioner has been divested of vested property rights without due process of law.

III. The Supreme Court of Florida has deprived Petitioner of equal protection of the law by waiving arguments and briefs and failing to call up the record from the Court of Appeals. Several hundred cases briefed by Petitioner failed to disclose one case in which this arbitrary procedure had been followed.

CONCLUSION

For the foregoing reasons and the reasons implicit in the law and questions presented, Petitioner prays that a writ be granted and an appropriate Order be entered to effect justice in the case.

Respectfully submitted,

PHILLIP H. LOGAN,
Counsel for Petitioner
Post Office Box 2279
Sanford, Florida 32771

CHARLES E. FELIX
Counsel of Record
1633 North Dormont Lane
Orlando, Florida 32804

RICHARD J. BROOKS
Counsel of Record
Post Office Box 523
Altamonte Springs, Florida 32701

June 29, 1978

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true copies of the foregoing has been furnished by United States Mail this day of June, 1978, to Charles E. Felix, Attorney for Florence Wood Endres, 1633 North Dormont Lane, Orlando, Florida, 32804, and Richard J. Brooks, Attorney for Florence Wood Endres, Post Office Box 523, Altamonte Springs, Florida, 32701.

PHILLIP H. LOGAN

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IN THE CIRCUIT COURT OF
THE EIGHTEENTH JUDICIAL
CIRCUIT, SEMINOLE COUNTY,
FLORIDA
PROBATE DIVISION
FILE NO: 72-6348

IN RE: Estate of

EDWARD C. ENDRES,

Deceased.

_____/

O R D E R

THIS CAUSE came on for hearing and it was stipulated that the decedent, Edward C. Endres, died testate March 29, 1971, in Seminole County, Florida, leaving a surviving spouse and one or more lineal descendants by a former wife and that all of these lineal descendants had reached majority before the decedent's death, that before marriage to the surviving spouse that decedent was possessed of real property the title to which stood in his individual name which property could qualify as homestead, and

that decedent's will bearing date of October 15, 1970 provided that the property in question should go to his surviving spouse.

The Court finds and determines said real property to be a homestead of which which decedent had the right to devise to his widow, there being no minor children. See In re Estate of McCartney, 299 So. 2d 5.

The court further does not find cause at this time to remove the personal representative and it is Ordered that the petition to remove the personal representative is denied.

DATED this 12th day of April, 1976.

_____
Circuit Judge

Copies furnished to:

Mr. Charles Felix
Mr. Phillip H. Logan
Mr. Richard J. Brooks

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT JANUARY TERM 1977

IN RE: THE ESTATE OF:)
EDWARD C. ENDRES,) CASE NO. 76-1028.
Deceased.)

Opinion filed April 15, 1977

Appeal from the Circuit Court for Seminole County; Virgil B. Conkling, Judge.

Phillip H. Logan of Shinholser, Logan & Moncrief, Sanford, for appellant.

Richard J. Brooks, Altamonte Springs, for appellee.

DAUKSCH, J.

This is a will contest case.

The essential facts are that Edward Endres died on March 29, 1971 leaving a widow and two grandchildren. In his will he devised his homestead to his widow in violation of the 1968 Florida Constitution which was the controlling law at the time of the death of Mr. Endres. Article X, Section 4 (c), Florida Constitution

stated "the homestead shall not be subject to devise if the owner is survived by spouse or minor children." Since the Constitution stated that the homestead was not subject to devise it passed by intestate succession. Since the property was homestead there were certain rights which vested in the grandchildren of the decedent simultaneously with the death of Mr. Endres which rights were a fee simple absolute ownership of the property subject to a life estate in the widow. This was provided by the then existing Section 731.27, Florida Statutes (1971) which effectively vested in the lineal descendants the title. No statutory re-enactment or constitutional change or amendment or decision of the court can change the fact that upon the death of Mr. Endres the property was vested in the lineal descendants subject only to a life estate in the widow. Unfortunately,

this decision is in conflict with the decision of our Supreme Court, In Re: Estate of McCartney, 299 So.2d 5 (Fla.1974). We are ever mindful of the admonitions in Hoffman v. Jones, 280 So.2d 431 (Fla.1973) but we are compelled by our determination that the vested property rights cannot be divested as we mentioned above. The Order of the trial court determining the homestead property to be subject to devise is reversed and this cause is remanded for further proceedings not inconsistent herewith.

REVERSED and REMANDED.

CROSS, J., concurs.
ALDERMAN, J., dissents, with opinion.

ALDERMAN, J., dissenting:

I think the decision of the Supreme Court in In re Estate of McCartney, 299 So. 2d 5 (Fla. 1974), is controlling. It is directly on point and cannot be distinguished. In McCartney, the Supreme Court held that under Article X, Section 4 of the Florida Constitution as adopted in 1968, a testator could properly devise homestead property to his surviving spouse, in absence of a minor child, and was not restricted to devising a life estate to his spouse with a vested remainder in his adult children. Right or wrong, this is the Supreme Court's interpretation of this section of the constitution. Even if we think the Supreme Court was wrong in this instance, we do not have the right to overrule its precedent. Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973).

I would affirm.

IN THE SUPREME COURT
OF FLORIDA

JULY TERM, A.D. 1977

FLORENCE WOOD ENDRES, :

Petitioner, :

v. :

DOROTHY MATTHIAS, : CASE NO. 51,658

Respondent. : DCA CASE NO. 76-1028

Opinion filed December 15, 1977

Writ of Certiorari to the District Court of Appeal, Fourth District

Richard J. Brooks and Charles E. Felix, Altamonte Springs, Florida, for Petitioner

Phillip H. Logan of Shinholser, Logan and Moncrief, Sanford, Florida, for Respondent

PER CURIAM.

A direct conflict with In Re: Estate of McCartney, 299 So.2d 5 (Fla. 1974), having been conceded to exist with the decision of the court below in this case,[1] oral argument here is dispensed with, certiorari is granted and the decision below is hereby vacated and set aside with directions to affirm the order of the trial court. Hoffman v. Jones, 280 So.2d 431 (Fla. 1973).

It is so ordered.

---

[1] In Re Estate of Endres, 345 So.2d 793 (Fla.4th DCA 1977).

BOYD, Acting Chief Justice, ENGLAND, SUNDBERG and HATCHETT, JJ.; and DREW (Retired), J., Concur

IN THE CIRCUIT COURT,
IN AND FOR SEMINOLE
COUNTY, FLORIDA
PROBATE DIVISION

PROBATE NO. 6348

IN RE: THE ESTATE OF

EDWARD C. ENDRES, Deceased.

_____/

MOTION FOR REHEARING

The Petitioner, DOROTHY MATTHIES, through her undersigned attorney, petitions this Court for rehearing of Petitioner's Motion to Designate Homestead which Motion was heard and Order duly entered by the Court on April 12, 1976, and would show to the Court as follows:

1. That the Court cannot find that the real property owned by decedent was "homestead property which decedent had the right to devise to his widow, there being no minor children..." since Article X, Section 4 (c) of the Florida Constitution, 1968, provides that "the homestead shall not be subject to devise if the owner is survived by

spouse or minor child."

2. That the Court has based its Order on the theory of In re Estate of McCartney, 299 SO 2nd 5, but the effect of this case was superceded by the effect of F. S. 732.101 (2) and F. S. 732.401 (1) of the Florida Probate Code of 1976, and is contrary to Article XII, Section 7, (a) of the Florida Constitution and Amendment V and Amendment XIV, Section 1, of the United States Constitution as interpreted in Board of Public Instruction for Bay County et al. v. State ex rel. Barefoot, et al., 199 SO 760; Gray v. Moss, 156 SO 262; and State ex rel. Woman's Benevolent Association, et al. v. Port of Palm Beach District, et al., 164 SO 851. Pertinent portions are attached for easy reference.

WHEREFORE, Petitioner prays that the Court rehear the subject motion to consider all law applicable to the stipulated facts.

DATED this 19th day of April, 1976.

PHILLIP H. LOGAN - of
SHINHOLSER, LOGAN AND
MONCRIEF
Post Office Box 2279
Sanford, Florida 32771
Attorneys for Petitioner

IN THE SUPREME COURT
OF FLORIDA

JULY TERM, A.D. 1977

FLORENCE WOOD ENDRES, :

Petitioner, :

v.

DOROTHY MATTHIAS, : CASE NO. 51,658

Respondent. : DCA CASE NO. 76-1028

:

PETITION FOR REHEARING AND ORAL ARGUMENT

Respondent, DOROTHY MATTHIAS, through her undersigned attorney petitions the Court to vacate the Opinion entered December 15, 1977, and order the original record from the District Court under Rule 4.5 C (6), and grant oral argument, and would show to the Court as follows:

1. The conflict set out in the Order of the District Court is dictum and should not be conceded without examination of the briefs filed in the District

Court.

2. The holding in the District Court was based expressly upon the mandate of Article X, Section 4(c) of the Florida Constitution, 1968, and implicitly upon the due process clause of the Florida and Federal Constitutions, all of which were argued before the District Court and which should be considered in briefs and upon oral argument before the Supreme Court. These matters were not pertinent in a brief on jurisdiction as required by Rule 4.5 C (6) so the Court has deprived itself of argument on the law upon which the District Court based its decision.

3. The effect of the Court's Order is:

   a. If Respondent had lost in the

District Court, the entire case could have been argued before the Supreme Court upon appeal of the Constitutional questions presented.

b. Since Respondent prevailed in the District Court, he cannot be heard by the Supreme Court and will be prohibited by the Order of the Supreme Court from presenting valid Constitutional issues for the Court's determination.

4. Respondent intends in good faith to raise the following Constitutional issues:

a. The District Court held that title to decedent's property vested at the instant of decedent's death. Judicial divestiture of property rights is unconstitutional under Article I, Section 9, and Article

XII, Section 7(a), Florida Constitution and Amendments V and XIV, Section 1 of the United States Constitution.

b. The Supreme Court has held that the November 2, 1972, Amendment to Article X, Section 4(c) of the Florida Constitution controls homestead of a person who died March 29, 1971. This violates the provisions of the State and Federal Constitutions as set out in 4(a) above.

c. The case upon which the Supreme Court based its Order, In Re: Estate of McCARTNEY, 299 SO 2d 5 (Florida, 1974), was never properly before the Court on Petition for Writ of Certiorari. This case arose after a per curiam decision and there was no conflict with In Re: Estate of McGinty, 258 SO 2d 450 (1971).

McGINTY AROSE UNDER THE 1968 CONSTITUTION.

McCARTNEY ALSO AROSE UNDER THE 1968 CONSTITUTION BUT WAS DECIDED AFTER 1972 AND ON THE BASIS OF THE 1972 AMENDMENT TO ARTICLE X, SECTION 4(c).

This is in clear violation of due process.

d. The McGinty, and McCartney cases construed FS 731.05 and made no determination of the effect of Article X, Section 4(c). In the case at bar, the District Court specifically found decedent's property to be vested at the instant of decedent's death in those entitled under Florida Statutes. The Statute in question was FS 731.27 (1971) and Not FS 731.05 as construed in the prior cases.

5. The record on appeal is inaccurate and

contains an error which could have influenced the Order of December 15, 1977. It is respectfully called to the Court's attention that the decedent was survived by a widow and a child, Dorothy Matthias. The facts set out in the opinion of the District Court failed to state that there was a natural child of decedent surviving him. Decedent was also survived by two children of a deceased child as was stated in the District Court Opinion.

WHEREFORE, Respondent prays that the Order of December 15, 1977, be vacated and that the Court grant oral arguments and entertain briefs on the Constitutional questions hereinabove raised under the rules which the Court has provided.

Respectfully submitted,

SHINHOLSER, LOGAN & MONCRIEF

By: _____
Phillip H. Logan

IN THE SUPREME COURT
OF FLORIDA

TUESDAY, MAY 2, 1978

FLORENCE WOOD ENDRES, **

Petitioner, **

CASE NO. 51,658

vs. **

DCA CASE NO. 76-1028

DOROTHY MATTHIAS, **

Respondent. **

On consideration of the petition for rehearing and oral argument filed by attorney for respondent,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

BOYD, ENGLAND, SUNDBERG and HATCHETT, JJ., Concur
ADKINS, ACTING C.J., Dissents

A True Copy

TEST:

Sid J. White
Clerk Supreme
Court

By:
Deputy Clerk

cc: Hon. Clyde L. Heath, Clerk
Hon, Arthur H. Beckwith, Jr., Clerk
Hon. Virgil B. Conkling, Judge

Phillip H. Logan, Esquire
of Shinholser, Logan & Moncrief
Richard J. Brooks, Esquire
and Charles E. Felix

IN THE SUPREME COURT
OF FLORIDA

FLORENCE WOOD ENDRES, Petitioner, vs. DOROTHY MATTHIAS, Respondent,	CASE NO. 51,658 DCA CASE NO. 76-1028

PETITION TO QUASH

DOROTHY MATTHIAS, Respondent, by her undersigned attorney, moves that the Court quash its Order entered May 2, 1978, which Order denied Respondent's Petition for Rehearing and Oral Argument. As grounds for this motion, Respondent would show unto the Court as follows:

1. By refusing to review the record, the Court has violated its precedents and has departed from its established procedure to the extent that Respondent has

been denied equal protection of the laws (see Affidavit attached and marked Exhibit A).

2. That by waiving oral argument for Respondent, the Court has violated its precedents and departed from its established procedures to the extent that respondent has been denied equal protection of the laws (see Affidavit attached and marked Exhibit B).

3. That on the face of the record the case at bar should have been appealed from the Circuit Court directly to the Florida Supreme Court. The Fourth District Court refused to entertain this appeal until jurisdiction was established on constitutional questions neither previously heard nor decided by the Supreme Court of Florida.

4. That the case at bar arose

under the Florida Constitution and involves land in Florida, so the matter should be decided in the State of Florida rather than burdening Respondent with the expense of appeal to the United States Supreme Court.

WHEREFORE, Respondent prays that the Court quash the Order denying Respondent's Petition for Rehearing and Oral Argument and further prays that the Court review the record of the Fourth District Court of Appeals in the light of briefs and arguments of counsel.

PHILLIP H. LOGAN - of
SHINHOLSER, LOGAN AND
MONCRIEF
Post Office Box 2279
Sanford, Florida 32771
Telephone:
(305) 323-3660
Attorney for Respondent

EXHIBIT A

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF SEMINOLE

BEFORE ME, the undersigned authority, personally appeared PHILLIP H. LOGAN, Attorney at Law, who being first duly sworn deposes and says:

1. He has made analysis of all cases presented for Writ of Certiorari to the Florida Supreme Court from 352 So2d 55 through 355 So2d 775.

2. Of 462 cases examined, there is no case other than the case at bar in which certiorari was granted without record and briefs.

3. The Supreme Court was consistent in denying certiorari except in criminal and workmen's compensation cases. In no

case was it stated that certiorari was granted and the Court of Appeals reversed except on review of the record with briefs and arguments.

4. Endres v. Matthias, 353 So2d 843, the case at bar, is the only case which made a final determination of individual rights without the Court reviewing the record and receiving briefs and arguments.

5. The Supreme Court consistently sustained the Court of Appeals by denying certiorari where no governmental agencies were involved and in the cases where certiorari was granted, it was for the purpose of securing individual rights rather than final determination of the same.

Phillip H. Logan

Sworn to and subscribed before
me this 9th day of May, 1978.

_____

Notary Public

State of Florida at Large

My commission expires December 27, 1981

EXHIBIT B

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF SEMINOLE

BEFORE ME, the undersigned authority, personally appeared PHILLIP H. LOGAN, Attorney at Law, who being first duly sworn deposes and says:

1. He has made analysis of all cases cited under Appellate Rule 3.10, FSA (1977). (Rule allows dispensing with oral argument.)

2. In every cited case the Court called up the record and briefs were filed.

3. The holding of the Court was uniform and consistently stated, "Our consideration of the Petition, the record and briefs leads us to conclude that there has been no (or substantial) deviation

from the essential requirement of law."

4. There were no cases in which an individual's rights were determined without petition, briefs and oral argument. Oral argument was waived only for governmental agencies who were before the Court for interpretation of statutes.

5. Endres v. Matthias, 353 So2d 843, the case at bar, is the only case in which the Court reversed and made a final determination of individual rights without oral argument.

6. In every case, the Supreme Court sustained the Court of Appeals if there were no governmental agencies involved.

Phillip H. Logan

Sworn to and subscribed before
me this 9th day of May, 1978.

_____

Notary Public
State of Florida at Large
My Commission Expires December 27, 1981.

IN THE SUPREME COURT
OF FLORIDA

IN RE: THE ESTATE OF EDWARD C. ENDRES, Deceased.	
FLORENCE WOOD ENDRES, Petitioner,	CASE NO. 51,658
vs.	DCA CASE NO. 76-1028
DOROTHY MATTHIAS, Respondent.	

MOTION TO RECALL MANDATE

DOROTHY MATTHIAS, Respondent, by her undersigned attorney, moves that the Court recall the Mandate issued in the case by the Fourth District Court of Appeals on May 11, 1978, pursuant to Order of this Court issued May 2, 1978, denying oral argument, and would show to the Court as follows:

1. That Respondent is deprived

of property without due process of law by the Mandate of the Court.

2. The Mandate of the Court was issued in violation of applicable equal protection clause of the Constitution.

3. The Court has authority under Article V, Section 4, (2), Florida Constitution, to preserve its jurisdiction to avoid irreparable harm to parties litigant.

WHEREFORE, Respondent moves that the Mandate be recalled and that the Court grant oral argument on this Motion at the convenience of the Court.

PHILLIP H. LOGAN - of
SHINHOLSER, LOGAN AND
MONCRIEF
Post Office Box 2279
Sanford, Florida 32771
Telephone: (305) 323-
3660
Attorney for Respondent

IN THE SUPREME COURT
OF FLORIDA

IN RE: THE ESTATE OF EDWARD D. ENDRES, Deceased.	CASE NO. 51,658
FLORENCE WOOD ENDRES, Petitioner, vs. DOROTHY MATTHIAS, Respondent.	DCA CASE NO. 76-1028

AMENDED MOTION TO RECALL MANDATE

DOROTHY MATTHIAS, Respondent, by her undersigned Attorney, moves that the Court recall the Mandate issued in this case by the Fourth District Court of Appeals on May 11, 1978, pursuant to Order of this Court issued May 2, 1978, which Order denied Oral Argument, and would show to the Court as follows:

1. The Supreme Court of the State of Florida has violated the Florida Constitution by granting Petition for Writ of Certiorari in that the Constitutional question settled by the Fourth District Court of Appeals was not raised by Certiorari and there was no principle of law enunciated with which there could be a conflict as required by the Constitution. The conflict was not in the holding of the cases but was dictum of the Court of Appeals. It was this reference to conflict upon which the Supreme Court assumed jurisdiction.

2. By reversing the Court of Appeals, the Supreme Court has departed from its established precedents so drastically as to deny Petitioner equal protection of the law. The Court granted Certiorari but refused to review the record below. Petitioner will show to the Court that in every

case where Certiorari was granted, the record has been examined with briefs and arguments.

3. By dispensing with Oral Argument on the Petition for Certiorari, the Supreme Court has departed from its precedents so drastically that Petitioner has been denied equal protection of the laws. Petitioner will show that the Court has never waived Oral Argument without benefit of the record and briefs except to deny Petitioner for Certiorari.

4. The case before the Court was decided by the Fourth District Court of Appeals solely upon Article X, Section 4(c) (1968) Florida Constitution. The Supreme Court has not based any decision upon this Constitutional provision either in the case at bar or in the cases with which there is alleged to have been conflict.

5. The Fourth District Court of Appeals determined jurisdiction to hear the appeal from the Circuit Court, Eighteenth Judicial Circuit, solely upon Constitutional issues involved. This is reflected in the record of the Fourth District Court but was not stated in its opinion. A review of the record will disclose the Constitutional basis for jurisdiction. The cases which the Court states are in conflict were based upon statutory interpretation rather than upon the Constitution.

6. If Petitioner had lost the Appeal to the Fourth District Court, Petitioner would have been entitled to appeal to the Florida Supreme Court on the Constitutional issues raised rather than upon the conflict upon which the Certiorari was granted. It is violative of the due process and equal protection clauses of the Florida and United

States Constitution for Petitioner to be denied right of appeal after prevailing in the lower Court.

7. It is implicit in the decision of the case at bar that the Supreme Court is recognizing the 1972 Amendment to Article X, Section 4 (c). The property rights of which Petitioner has been deprived became vested at date of death in 1971. The 1972 Amendment cannot deprive Petitioner of vested property rights. This is violative of due process under Florida and United States Constitutions.

8. The record on appeal is inaccurate. The opinion of the Fourth District contains an error which could have prejudiced the Supreme Court. The entire record should be reviewed to correct the error which stated that Decedent was survived only by grandchildren when the stipulated facts were that

Decedent was survived by one child and two children of a deceased child, Decedent's surviving child being your Petitoner.

WHEREFORE, Respondent prays that the Orders of December 15, 1977, and May 2, 1978, be vacated, that the Mandate be recalled and that Petitoner be granted Oral Argument at the convenience of the Court.

Phillip H. Logan - of
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Post Office Box 2279
Sanford, Florida 32771
Telephone:
(305) 323-3660
Attorneys for Respondent

IN THE SUPREME COURT
OF FLORIDA

FRIDAY, JUNE 23, 1978

IN RE: ESTATE OF *
EDWARD C. ENDRES, *

FLORENCE WOOD ENDRES, *
*
Petitioner,
* CASE NO. 51,658
vs. *
DCA Case No.
DOROTHY MATTHIAS, * 76-1028
*
Respondent. *
* * * * * * * * * * * * *

Respondent's amended motion to recall mandate is hereby denied.

A True Copy

TEST:

W
CC: Phillip H. Logan, Esquire
Richard J. Brooks, Esquire
Chalres E. Felix, Esquire
Hon. Clyde L. Heath, Clerk
Hon. Arthur H. Beckwith, Jr., Clerk

Sid J. White
Clerk, Supreme Court

Florida Constitution (1968)
Article X, Section 4 (c)

The homestead shall not be subject to devise if the owner is survived by spouse or minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law. (Emphasis supplied.)

Florida Constitution (1968)
Article I, Section 9

Due process - No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against himself.

United States Constitution
Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution
Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IN THE CIRCUIT COURT
IN AND FOR SEMINOLE
COUNTY, FLORIDA
PROBATE DIVISION

PROBATE NO. 6348

IN RE: THE ESTATE OF)
)
EDWARD C. ENDRES, Deceased.)

ORDER

The Court heard Oral Argument on the Motion for Rehearing filed for Petitioner Dorothy Matthias, by her counsel Phillip H. Logan, Esquire, on the 4th day of May, 1976. Appearances were entered by Phillip H. Logan, Esquire on behalf of Dorothy Matthias; Richard J. Brooks, Esquire, appearing on behalf of Florence Wood Endres, Executrix of the estate of Edward C. Endres; and Charles Felix, Esquire, as representative of the estate of Edward C. Endres. The Court being advised in the premises and after due

consideration thereof, hereby enters its order.

It is hereby ordered that the Motion for Rehearing of this Court's order of April 12, 1976, be and the same is hereby denied.

Dated this 12th day of May, 1976.

Honorable Judge
Virgil B. Conkling
Circuit Judge

IN THE CIRCUIT COURT, IN AND FOR SEMINOLE COUNTY, FLORIDA

PROBATE NO. 6348

In re: Estate of

EDWARD C. ENDRES, Deceased.

DOROTHY MATTHIES,

Petitioner - Appelant.

/

ASSIGNMENTS OF ERROR .

Petitioner - Appelant assigns the following as error and grounds for this appeal:

1. The Court erred in entering Judgment contrary to and without consideration of Article X, Section 4 (c), Florida Constitution, 1968.

2. The Court erred in entering Judgment contrary to and without consideration of Article XII, Section 7 (a), Florida Constitution, 1968.

3. The Court erred in entering Judgment contrary to and without consideration of Amendment V of the Constitution of the United States of America.

4. The Court erred in entering Judgment contrary to and without consideration of Amendment XIV, Section 1, of the Constitution of the United States of America.

5. The Court erred in entering Judgment contrary to and without consideration of the provisions of F.S. 732.101 (2) and F.S. 732.401 (1) of the Florida Probate Code of 1976.

6. The Court erred in entering Judgment contrary to and without consideration of the provisions of F.S. 731.05 and F.S. 731.27 (1971).

7. The Court erred in entering Judgment on the authority supported only by

1972 Constitutional Amendment adopted after rights had vested March 29, 1971.

8. The Court erred in entering Judgment solely on the basis of In re McCartney, 299 SO 2d 5, 1974.

PHILLIP H. LOGAN - of
SHINHOLSER, LOGAN & MONCRIEF
Post Office Box 2279
Sanford, Florida 32771
Attorneys for Petitioner

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978
No.

DOROTHY MATTHIAS, Petitioner

vs.

FLORENCE WOOD ENDRES, Respondent

NOTICE OF APPEARANCE

The undersigned attorney for the Petitioner, DOROTHY MATTHIAS, hereby enters his appearance in the captioned cause.

DATED this 29th day of June, 1978.

PHILLIP H. LOGAN
Post Office Box 2279
Sanford, FL 32771
(305) 323-3660

Attorney for Petitioner

Supreme Court, U. S.
FILED
AUG 9 1978
MICHAEL RODAK, JR., CLERK

IN THE

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978
No. 78-23

DOROTHY MATTHIAS, Petitioner

vs.

FLORENCE WOOD ENDRES, Respondent

BRIEF FOR RESPONDENT IN OPPOSITION

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

Phillip H. Logan
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Counsel for Petitioner

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Counsel for Respondent

Richard J. Brooks
Post Office Box 523
Altamonte Springs, FL 32701
Counsel for Respondent

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978
No. 78-23

DOROTHY MATTHIAS, Petitioner

vs.

FLORENCE WOOD ENDRES, Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF FLORIDA

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions below are adequately set forth in the Petition.

JURISDICTION

The Supreme Court lacks jurisdiction under 28 U.S.C. §1257 (3) because there has been no violation of any title, right, privilege or immunity which could be set up or claimed under the Constitution of the United States. This litigation arose in and was decided in the Florida courts on independent and adequate state grounds.

QUESTIONS PRESENTED

I. Does strict adherence to the law concerning state created property rights, illuminated by a prior interpretation of the State Constitution by the State Supreme Court which is directly controlling authority, constitute a violation of the due process or equal protection amendments to the United States Constitution?

II. Does the mere assertion of a federal constitutional question during the course of litigation require, as a matter of federal equal protection or due process, that the State Supreme Court conduct a full scale review of a case arising solely under the State Constitution or deny the validity of controlling state case law not based on Constitutional questions where the state court below unambiguously admits that its own decision is contrary to controlling state precedent which it is undeniably bound to follow?

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent constitutional provisions are adequately set forth in the Petition.

STATEMENT

Edward C. Endres died testate on March 29, 1971, survived by his widow, one adult child, and two grandchildren (children of a deceased child). Decedent died siezed of real property which qualified as "homestead property" under the laws and Constitution of

the State of Florida. His will provided that this real property was to go to his surviving spouse.

The Probate Court entered an Order determining that the real property in question was homestead property and further held that decedent could devise such homestead to his widow. This decision followed the controlling authority enunciated by the Florida Supreme Court in **In re Estate of McCartney**, 299 So. 2d 5 (Fla. 1974), a case cited by the court and squarely on point. (App. of Petition, p. la(b)).

The Fourth District Court of Appeals took issue with the interpretation accorded article X, Sec. 4(c), **Florida Constitution** (1968) by the Supreme Court in the **McCartney** case, concluding that the devise was invalid according to its own view. It reversed and remanded the cause in blatant disregard not only of the **McCartney** precedent but of **Hoffman v. Jones**, 280 So. 2d 431 (Fla. 1973), which demands that District Courts of Appeal whose opinions are in conflict with those of the State Supreme Court follow the case law set forth by the latter court. The fact that both of these decisions were controlling and that the District Court's holding was in direct conflict with them was admitted in the Court's opinion. The only authority cited in the District Court's opinion as a basis for the "vesting" theory here urged by Petitioner was a Florida statutory provision which the court deemed applicable in spite of the clear mandate of **McCartney**. No mention whatsoever was made of the implication of any due process or equal protection issues, state or federal. (See App. of Petition, p. 2a, for text).

In view of the District Court's open admission that its holding was in direct conflict with the controlling construction of article X, Sec. 4(c), the Florida Supreme Court granted certiorari and vacated the District Court's decision without oral argument. It is obvious that oral argument would have served no purpose at that stage in this case, since the error by the court below had already been conceded, in effect, in the court's own words.

ARGUMENT

I. THE DECISION BELOW WAS BASED ON INDEPENDENT AND ADEQUATE STATE GROUNDS

The only issue in the present case involves the Florida Supreme Court's interpretation of its own State Constitution, regardless of attempts by Petitioner to interject unfounded fed-

eral constitutional claims. There is, therefore, no ground whatsoever which would warrant review by this court or certiorari. The Florida courts, as well as other state courts, should be left to interpret and follow state law concerning purely state created rights without fear that every constitutional or statutory construction and procedural decision faces ultimate scrutiny by the United States Supreme Court simply because a litigant has appended federal constitutional claims to its position.

The Court's attention must at the outset, be drawn to the absence of any valid federal claim in this case which might give it jurisdiction under 28 **U.S.C.** §1257 (3). The substantive and procedural aspects of the case are governed by state, not federal, law. The controlling State Constitutional provision, concerning the disposition of state homestead property, was construed by the State Supreme Court to hold that a decedent could devise such property to a surviving spouse if there were no minor children. It was the clear judicial duty of the lower Florida courts to follow this construction of Florida law and is a matter solely within the province of the State Supreme Court to uphold in the face of flagrant defiance by the District Court of Appeals.

Petitioner, however, urges that somewhere within the straightforward setting of state law shown above there lurks a federal issue which should take the case completely out of the hands of the Florida courts and vest jurisdiction in the Supreme Court of the United States. This claim is based, however, on alleged federal constituional grounds, unsupported by any reference to authority, which rely solely on Petitioner's personal view of the Florida Constitution. A basic tenet long adhered by this Court, however, is that the Supreme Court "is without authority to review and revise the construction affixed to a state statute as to a state matter by the court of last resort of the state." **Quong Ham Wah Co. v. Industrial Commission,** 255 U.S. 445, 448 (1921). The term "state statute" above clearly encompasses state constitutional provisions. **Walker v. Sauvinet,** 92 U.S. 90 (1875).

Unfortunately, Petitioner's brief plainly misstates the construction of article X, Sec. 4 (c), by the Florida Supreme Court in the **McCartney** case, **supra**. Petitioner asserts that the **McCartney** decision did not construe or interpret article X, Sec 4 (c) and implies that the ruling was based on a prior case whose facts made it totally inappropriate for use as precedent (Petition, p. 5). This apparently is intended to leave the impression that the Florida

Supreme Court's decision in **McCartney** was so lacking in merit that the United States Supreme Court should abandon its refusal to assume jurisdiction over such purely state matters and reinterpret the State Constitution so as to give rise to Petitioner's unsupported constitutional claims, based on the vesting of the property according to such reinterpretation. The words of the **McCartney** decision, however, unmistakeably contradict Petitioner's position, as follows:

> This Court, in the **McGinty** case, **supra**, **[In re Estate of McGinty**, 258 So. 2d 450 (Fla. 1972)] specifically held that, since " [t]he class of persons designated as 'minor children' is substantially different from and inconsistent with "lineal descendants.' . . . the requirements of Article X, §4, of our present Constitution, adopted in 1968, controls and repeals the inconsistent provision of Florida Statutes, §731.05 (1)." In that case, McGinty, a widower, was survived by four adult children, and the devise of his residence to one of his daughters was held to be valid. We consider that case to be controlling in the present case. Since on the date of the order presently considered the case law established the right of a decedant to devise homestead property to an adult child or children, we hold that the obverse is true, and that, in the absence of a minor child, the decedent could devise homestead property to his surviving spouse."

299 So. 2d at 6. Obviously, the **McGinty** decision, **supra**, was based entirely on the court's interpretation of article X, Sec. 4 (c), the exact provision in question in **McCartney**. The **McCartney** court, which set out article X, Sec. 4 (c) verbatim in a footnote to add to the clarity of its decision, merely applied the **McGinty** construction to the set of facts in the later case. Nowhere is it maintained, except perhaps by Petitioner here, that a statutory or constitutional construction should be avoided simply because the scope of the construction can be amplified and extended to a case whose facts are covered but somewhat different.

The **McCartney** decision was based wholly on article X, Sec. 4 (c) and should not be disturbed by this Court. The only federal constitutional questions presented to the Supreme Court of Florida were based on divestiture of property rights which had vested solely according to Petitioner's independent interpretation of the State Constitution. This interpretation, however, was in direct conflict with a State Supreme Court construction, already placed on the provision in question, which held that the homestead property could pass by devise. Clearly, this judicial construction means that there could never have been an automatic vesting of the property in another party upon decedent's death where such property was specifically subject to devise.

This interpretation of Florida law was the exclusive domain of the Florida Supreme Court, not of Petitioners, nor of the United States Supreme Court, according to its own decisions, **supra**. When the litigation arose, the Florida courts were asked to ignore existing precedent, under the proposition that the prior construction of article X, Sec. 4 (c) by the Supreme Court was erroneous, and to adopt federal constitutional claims based **in toto** on an alternative interpretation of the State Constitution. There was no reason for the courts to reach or address constitutional issues, however, since the controlling construction of Florida law had already been conclusively rendered. This construction of the State Constitution respecting property rights to state land involved no federal rights whatsoever. The only proper course for the courts, especially the State Supreme Court, to follow was to adhere to controlling state precedent, regardless of illusory claims of federal rights based on conflicting **opinion** as to the proper constitutional construction. This Court has held that it will not review judgments of state courts that rest on adequate and independent state grounds. **Dixon v. Duffy**, 342 U.S. 33 (1951). In addition it has been stated that the Supreme Court has no jurisdiction to review a state court decision,

> unless it appears affirmatively from the record not only that a federal question was presented for discussion to the highest court of the state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause; that the federal question was actually decided, or that judgment as rendered could not have been rendered without deciding it.

Southwestern Bell Telephone Co. v. Oklahoma, 303 U.S. 206, 212, 213 (1937). The significance of this language should be self-evident in light of the foregoing discussion.

It must be pointed out that Petitioner's vague equal protection claim, based on the Florida Supreme Court's procedural handling of this case, should in no way be treated apart from the substantive issue of state constitutional law. This Court has held that it is a familiar principle that the "independent and adequate state grounds" rule applies equally to procedural as well as substantive matters. **Henry v. Mississippi**, 379 U.S. 443 (1964), **reh. denied**, 380 U.S. 926 (1964). Petitioner in the instant case has surveyed a certain group of Florida cases presented for Writ of Certiorari to the Florida Supreme Court and concluded with an analysis which elevates any deviation by that Court from prior procedure, for whatever reason, to a federal constitutional issue. Once again, there is not a single

reference to source of authority which would propose that absolute procedural consistency by a state court in certiorari proceedings is a requirement of equal protection. Moreover, neither the affidavit relied on nor the argument in the Petition cites one Florida case among the "hundreds" (Petition, p. 7) surveyed which corresponds factually to the case at hand. The probability that this case, where the lower court's decision of record clearly admits that it is reached in defiance of controlling authority, is quite rare is conveniently ignored. Instead, Petitioner insists that the state court's discretion in dealing with such a case is to be completely abrogated by a claim that this writ of certiorari proceeding must conform precisely to that of any group of cases arbitrarily selected by Petitioners.

As with the interpretation of the State Constitution, the procedure to be followed by the Florida Supreme Court regarding matters of state law, is solely within power of that court to establish. Petitioner has failed to put forward a constitutional question relating to the Florida Court's action based either on pertinent authority or plain common sense. The court's decision was clearly based on independent and adequate state grounds according to both procedure and substance.

II. THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW

Although this Court's lack of jurisdiction in this case based on any federal claim whatsoever is denied above, the narrow scope and local nature of the controversy must be brought to the Court's attention. Indeed, an examination of the Petition itself fails to disclose any claim that this case merits special attention by the nation's highest tribunal. The reason for this omission should be clear; this litigation, which is exclusively concerned with state law, had no significance whatsoever beyond Petitioner's isolated claim contesting a 1971 will. No national issues are involved. An ultimate finding in favor of Petitioner, for which it would be necessary for this Court to adopt a revolutionary stance with regard to intervention into the authority of state courts to interpret and enforce their own laws, would serve to benefit only this single plaintiff.

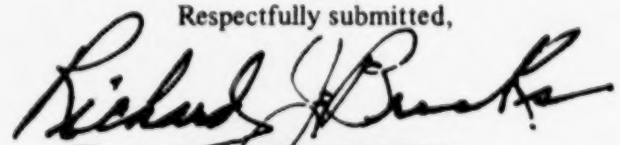
In 1972, the constitutional provision, article X, Sec. 4 (c), was further amended so that the wording would unmistakeably and unequivocally support the Florida Supreme Court's interpretation in **McCartney**. This not only lends the strongest possible credibility to the

state court's original interpretation of the provision, but also buttresses the logic of this Court's policy of leaving the construction of state law to state courts. Here, the Florida court was familiar both with precisely why article X, Sec. 4 (c) had been enacted and what state practice had been subsequent to such enactment. This knowledge became part of its construction of the provision and was vindicated immediately by the state legislature. It is inconceivable that the United States Supreme Court should deem it appropriate here to second-guess the highest court of Florida in interpreting its own law in order to validate abstract and wholly unsupported constitutional claims of this single Petitioner.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari. be denied.

Respectfully submitted,

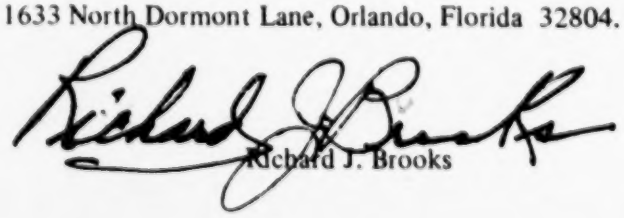


RICHARD J. BROOKS
Post Office Box 523
Altamonte Springs, FL 32701
Counsel for Respondent

Dated this 24th day of July 1978.

CERTIFICATE OF SERVICE

I hereby certify that three true copies of the foregoing have been furnished by United States Mail this 3rd day of August, 1978 to Phillip H. Logan, Attorney for Dorothy Matthias, P.O. Box 2279, Sanford, Florida 32771 and Charles E. Felix, Attorney for Florence Wood Endres, 1633 North Dormont Lane, Orlando, Florida 32804.



Richard J. Brooks